

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

Gale A. Rachuy,

08-MC-68 JMR/FLN

Plaintiff

v.

ORDER AND  
REPORT & RECOMMENDATION

Mark S. Rubin, et al.,

Defendants.

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This case was dismissed on February 27, 2009, pursuant to an order issued by Judge Rosenbaum [#6], adopting this Court's Report and Recommendation [#5] that the case be dismissed because the Plaintiff failed to pay the partial filing fee of \$39.00 as previously ordered by the Court [#4]. The payment was due on January 27. It has been brought to the Court's attention that the same day the case was dismissed, the Plaintiff paid the \$39.00 partial filing fee. For reasons that are not readily apparent, the receipt of the filing fee was not docketed until March 12, 2009 [#10]. On March 10, 2009, this Court issued an order [#9] denying Plaintiff's renewed motion [#8] in which he had alleged that the filing fee had been paid. In its order of March 10 [#9], the Court expressly stated that there was no record that the partial filing fee had been paid. It now appears the Court was mistaken in that assertion. Although paid a month late, at the time of the Court's March 10, 2009, order [#9], the fee had been paid, but the receipt not yet docketed.

Based upon the foregoing and all the files, records and proceedings herein, IT IS  
HEREBY ORDERED that this Court's order dated March 10, 2009 [#9] is vacated.

Even though the partial filing fee was paid a month late and the case was dismissed, the fee was paid. As the partial filing fee has now been paid, IT IS HEREBY RECOMMENDED

that the Court's order dated February 27, 2009 [#6] be vacated and that the matter be remanded to the Magistrate Judge to address the merits of the Plaintiff's petition.

DATED: March 20, 2009.

s/ Franklin L. Noel  
FRANKLIN L. NOEL  
United States Magistrate Judge

Pursuant to the Local Rules, any party may object to this Report and Recommendation by filing with the Clerk of Court and serving on all parties, on or before **April 8, 2009**, written objections which specifically identify the portions of the proposed findings or recommendations to which objection is being made, and a brief in support thereof. A party may respond to the objecting party's brief within ten days after service thereof. All briefs filed under the rules shall be limited to 3500 words. A judge shall make a de novo determination of those portions to which objection is made.

This Report and Recommendation does not constitute an order or judgment of the District Court, and it is, therefore, not appealable to the Circuit Court of Appeals.